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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,390	09/22/2003	David H. McDaniel	509582000600	4216

7590 08/21/2006

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EXAMINER

GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/665,390</p>	<p>Applicant(s)</p> <p align="center">MCDANIEL, DAVID H.</p>	
	<p>Examiner</p> <p align="center">Konata M. George</p>	<p>Art Unit</p> <p align="center">1616</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/04; 5/4/05</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-16 are pending in this application.

#### ***Drawings***

1. The drawing(s) filed under 37 CFR 1.184 or 1.152 are accepted by the examiner.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on December 14, 2005 and May 4, 2005 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

#### ***Restriction Requirement***

3. Applicant's election without traverse of Group I, claims 1-13 in the reply filed on May 1, 2006 is acknowledged.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7, 10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 7, applicant has claimed that

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the granules have the size approximately equal in size of the pores of mammalian skin, however, applicant has not defined what this size is. Regarding claim 10, applicant claims a nanodevice, however, it is unclear to the examiner what exactly are nanodevices. Regarding claim 12, applicant claims that the granules are impacted against the skin while under a vacuum. The examiner is unclear as to how this can happen. A vacuum as the examiner understands, is suction; so how can the granules be impacted against the mammalian skin.

5. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 13, the phrase "derivative, analogs, homologs, and subcomponents" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by " derivative, analogs, homologs, and subcomponents "), thereby rendering the scope of the claim(s) unascertainable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 9 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Barker (US 5,360,824).

Barker discloses a cream comprising a plurality of water-soluble granules, wherein the granules can be water-soluble vitamins (abstract). Column 2, lines 59-61 teach that the skin-abrading granules can be any suitable size. It is the position of the examiner that since the granules are formulated into a cream it satisfies the limitation of claim 9, wherein the granules are disposed within or upon a secondary substance.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5, 9 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Puvvada et al. (US 6,664,217).

Puvvada et al. discloses a toilet bar have simultaneous exfoliating and moisturizing properties. The toilet bar comprises a cleansing base, a moisturizer and exfoliant particles having a particle size of from about 100 to 600 microns (col. 3, lines 1-17). Column 12, lines 25-35 teach the composition of the particles such as natural minerals, flower petals and leaves and jojoba ester beads (equivalent to applicants minerals, botanical product and herbaceous product). It is the position of the examiner that since the granules are formulated into a toilet bar it satisfies the limitation of claim 9, wherein the granules are disposed within or upon a secondary substance.

8. Claims 1, 8, 9 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Tavger et al. (WO 99/20336).

Tavger et al. discloses an apparatus for dermal abrasion comprising a pressurized gas and a sterile fluid. The pressurized gas is introduced to the fluid and applied to the epidermis (abstract). In one embodiment of the invention the sterile liquid may include a suspension of particles (page 11, 4<sup>th</sup> paragraph). It is the position of the examiner that since the granules are formulated as a fluid it satisfies the limitation of claim 9, wherein the granules are disposed within or upon a secondary substance.

### ***Conclusion***

9. Claims 1-13 are rejected.


***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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